
**United States
Circuit Court
of Appeals**
FOR THE NINTH CIRCUIT

SHELL COMPANY OF CALIFORNIA,
a Corporation,

Appellant,

v.

PACIFIC STEAMSHIP COMPANY, a Corporation
of Portland, Maine, Claimant and Owner of the
Steamship "ADMIRAL GOODRICH," Her
Tackle, Apparel and Furniture,

Appellee.

Brief of Counsel for Appellee

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON,
NORTHERN DIVISION.

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UPON APPEAL FROM THE UNITED STATES
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STATEMENT OF THE CASE.

This is an appeal by the Shell Company of California from a decree rendered against it in the District Court of the Western District of Washington, Northern Division, denying its right to a maritime lien upon the Steamer *Admiral Goodrich*. The basis of the alleged claim of lien was the furnishing of fuel oil

valued at \$2667.10 to the *Admiral Goodrich* on August 14, 1919, upon the order of the charterer of the vessel, the Gulf Mail Steamship Company. (Amended Libel, Ap. on App. Pg. 5).

For a full understanding of the situation leading up to the chartering of the vessel and the furnishing of the fuel oil, it will be necessary to give the following resume of the testimony:

On February 28, 1916, the Pacific Alaska Navigation Company purchased the Steamer *Airoline* from the Airoline Steamship Company. The *Airoline* was subsequently named the *Admiral Goodrich* and was owned by the Pacific Alaska Navigation Company until October 24, 1918. (Ap. on App. Pgs. 36 and 37). On October 24, 1918, the Pacific Alaska Navigation Company sold the *Admiral Goodrich* to the Pacific Steamship Company, claimant herein, and the latter has ever since owned the vessel. (Ap. on App. pages 36 and 39, also respondent's exhibit 18).

The claimant is a subsidiary of the Pacific Alaska Navigation Company, which owns the stock of the claimant. (Ap. on App. Page 37). For some ten or twelve years prior to the trial of this case the Pacific Alaska Navigation Company had used the trade name "Admiral Line" and its subsidiary, the claimant, has continued the use of that trade name. (Ap. on App. Pgs. 34 and 37).

On October 17th (Respondent's Exhibit 12), October 28th (Respondent's Exhibit 11), November 21st. (Respondent's Exhibit 10), December 6th (Respondent's exhibit 9), December 12th (Respondent's Exhibit 8), December 20th (Respondent's Exhibits 6 and 7), December 27, 1918 (Respondent's Exhibit 5), February 3rd (Respondent's Exhibit 4), March 31 st (Respondent's Exhibit 3), May 16 th (Respondent's Exhibit 2), June 20, 1919 (Respondent's Exhibit 1), the libelant, over the signature of E. R. Farley, Manager of its fuel oil department at San Francisco, wrote letters to the claimant with regard to supplying the "Admiral Goodrich" with fuel oil and in some instances, enclosed what are known as "Bought and Sold Notes" (Deposition of Cornelius F. Buckley, Pages 6, 7, 8, 9, 10 and 11).

On May 19, 1919, the libelant billed on the claimant for fuel oil furnished to the *Admiral Goodrich* (Respondent's Exhibit 13), likewise on February 23, 1919 (Respondent's Exhibit 14), March 31, 1919 (Respondent's Exhibit 15) and April 23, 1919 (Respondent's Exhibit 16).

On July 23, 1919, the *Admiral Goodrich* was chartered by the claimant to the Gulf Mail Steamship Company, which charter was executed by F. M. Barry, Assistant General Manager at San Francisco, on be-

half of the claimant, and by Paul Hartman, President, on behalf of the Gulf Mail Steamship Company. (Exhibit A to Libel) (Ap. on App. Pgs. 7 to 16, inclusive).

On August 14, 1919, the charterer, through Mr. Hartman, its President, telephoned the witness Buckley and ordered the fuel oil, which is the subject of this controversy, for the *Admiral Goodrich*. (Deposition, Buckley, Pgs. 2 and 3). The oil was thereafter furnished upon that order. Buckley says he did not know who owned the vessel and made no inquiry concerning her ownership. He states that the Gulf Mail Steamship Company was acting as Manager of the steamer. (Deposition, Buckley, Pg. 3). Parenthetically, his use of the word "manager" is a conclusion of law, not supported by the evidence. He confesses he was doubtful about the ownership of the Admiral Line vessels. (Deposition Buckley, Pgs. 3 and 4). As Assistant Manager of the libelant's fuel department, he was familiar with the standing contract to furnish oil for the specific steamers of the Gulf Mail Steamship Company and knew that the *Admiral Goodrich* was not named in that contract. (Deposition, Buckley, Page 13).

The pleadings, including the charter, testimony and exhibits, show that libelant, claimant and charterer

all maintained general or managerial offices at San Francisco.

Libelant's brief, page 7, correctly states the pertinent clauses of the charter which bear upon the questions here involved. Those questions are:

FIRST. Was the charterer one of the individuals named in the Act of Congress of June 23, 1910, who was presumed to have authority from the owner to procure supplies for the vessel?

SECOND. If the first question is answered in the affirmative, was there not sufficient information in the possession of the libelant to require the exercise of reasonable diligence in ascertaining that the charterer in ordering the fuel oil, did not have authority to bind the vessel therefor?

At the conclusion of the trial, claimant asked the court to dismiss the action upon the two grounds referred to above and submitted its memorandum of authorities which raised both issues. (Supplemental Record Pgs 2, 3 + 4). The trial court did not pass upon the first proposition, but decided the case upon the second, and, decreeing in favor of the claimant held that the libelant must be charged with such knowledge of ownership as required reasonable diligence to ascertain the terms of the charter party. (Ap. on App. 45).

ARGUMENT.

I.

A CHARTERER, AS SUCH, IS NOT ONE OF THE INDIVIDUALS NAMED IN THE ACT OF CONGRESS OF JUNE 23, 1910, WHO IS PRESUMED TO HAVE AUTHORITY FROM THE OWNER TO PROCURE SUPPLIES FOR THE VESSEL.

We are firmly of the opinion that the foregoing is the only real question involved in the determination of this case. The authorities which discuss this point are few in number, for the sole reason, we apprehend, that most maritime lien cases have revolved around orders for repairs, supplies, etc., which have been given by the master or some other individual designated by the statute as being presumed to have authority from the owner.

Had the charter been a demise instead of a time charter, this issue would not be before this court, for, in such case, the order for the fuel oil would have been given by an owner *pro hac vice*. Unfortunately for the libelant, the Gulf Mail Steamship Company was not an owner *pro hac vice* and so the libelant, having dealt with someone *other than the master*, bases its claim of lien "upon an authority to contract, which is in essence nothing more than an inference from an

apparent act of authority." The libelant admits the charterer actually was without authority, under the terms of the charter party to impose liens on the vessel.

The Hatteras, 255 Fed. 518

In the above cited case, the court asked: "How far may one go under such circumstances, when he has no knowledge of the vessel's ownership, agents or charterings and, closing his eyes, avoid or neglect all inquiry?" The question asked by the court in *The Hatteras* case is one which we have already propounded to the libelant and which we again repeat on this appeal.

Because the decisions are not numerous is no reason for deeming them without force and they are none the less logical. The leading case to which we shall presently advert has been cited with approval by this Honorable Court. The case upon which we confidently rely and which we believe will render unnecessary any discussion of the second proposition (the only one from Libelant's point of view) is *Curacao Trading Company v. Bjorge*, 263 Fed., 693, writ of certiorari denied, 253 U. S. 492.

That case, bearing the stamp of approval of the United States Supreme Court, comes out flat-footed and says that there is no presumption that a charterer has authority from the owner to procure supplies, etc.

for a vessel unless he is the master, ship's husband or person to whom the management of the vessel at port of supply is entrusted; that no lien is given for supplies unless charterer stands in such relation to the vessel.

A glance at the charter party shows that the charterer had no such relation to the vessel. It is a usual time charter form wherein practically everything is furnished by the owner with the ship. It is true that the charterers are obligated to furnish and pay for fuel but, outside of dunnage and mooring lines (if required) for South American ports, fuel was the only physical supply the charterer was required to provide. However, it is plain that the owner, and not the charterer, was the person who had the management of the vessel at the port of supply. There is nothing, therefore, which can place the charterer within the terms of the statute. The libellant is standing upon the shifting sands of an authority to contract, which was nothing more than an inference from an apparent act of authority.

The Curacao Trading Company case, as stated above, has been approved by this court in *The Portland*, 273 Fed., 401. See also, *The Dana*, 271 Fed. 356, wherein Judge Chatfield of the District Court for the Eastern District of New York held that the charterer has no inherent or presumptive authority to bind the vessel's credit.

We must carefully bear in mind that this is not one of those cases where the supplies were ordered by the master, such as occurred in *The South Coast*, 251 U. S. 519, a case from this circuit.

It is clear, from the foregoing authorities, that the libelant never had a lien, not even a presumptive lien, regardless of its knowledge or lack of knowledge, its diligence or lack of diligence in connection with the charter party on this vessel.

Furthermore, the United States Supreme Court has announced that the statute is *stricti juris* and will not be extended by construction, analogy or inference.

Piedmont Coal Co. v. Seaboard Fisheries Co.
254 U. S. 1, at Pg. 12

Congress has named the persons clothed with presumptive authority to bind the vessel's credit and if, as in the case at bar, the order comes from another, the presumption does not exist nor does the lien.

II.

THERE WAS SUFFICIENT INFORMATION IN THE POSSESSION OF THE LIBELANT TO REQUIRE THE EXERCISE OF REASONABLE DILIGENCE IN ASCERTAINING THAT THE CHARTERER, IN ORDERING FUEL OIL, DID NOT HAVE AUTHORITY TO BIND THE VESSEL THEREFOR.

Assuming, but not admitting, that this case requires an interpretation, or rather, application of that part of the Act which deals with the amount of diligence to be exercised by the furnisher, we submit that the claimant has sustained the burden of proof and has met the test laid down by your Honorable Court in the case of *The Portland* already referred to. Therein it was said that the rule "to the effect that one knowing that he is dealing with a charterer is put on inquiry as to the terms of the charter party," can be accepted without disturbing the authority of *The South Coast* and citing *The Oceana*, 233 Fed. 139, *Id.* 244 Fed., 80, *The Castor*, 267 Fed. 608.

The learned District Judge has succinctly summarized the testimony on this point. (Ap. on App. Pg. 43, 44 and 45). We have also referred to the same testimony in our statement of the case. This phase, therefore, resolves itself into a very simple proposition, namely: Was the libellant, by its past dealings with the claimant, put upon inquiry when it received the order for fuel oil from the charterer? We say "simple" because the facts are not in dispute and we believe this court, as did the trial judge, will say that under such circumstances a reasonable man should have inquired. Needless to say, the opportunity of learning the facts was at hand, as all the parties were in San Francisco and the charter itself was executed in that city.

We have no particular quarrel with the libellant's historical analysis of the law of maritime liens. How-

ever, we cannot see how the libelant can derive much comfort from the decisions cited by it.

The Kate, 164 U. S. 458, is practically on all fours with the case at bar and, while that decision antedates the maritime lien statute, the United States Supreme Court has approved the doctrine that the statute made no changes in the general principles of the law as existed prior to this legislation.

Piedmont Coal Co. v. Seaboard Fisheries Co. (supra)
The Jack-o-Lantern, 42 Sup. Ct. Advance Opinions
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Furthermore, *The Yankee*, 233 Fed. 918, cited by libelant, holds the statute to be nothing more than a declaration of long recognized maritime principles. It is true that some minor changes were effected by the enactment of this statute, such as eliminating the necessity of proving that credit was given the vessel, etc. However, the theory of the law of maritime liens, its general principles, has remained the same and it is to those general principles we must look for the correct application of the law to the case now before the court.

We can find no difficulty with the numerous cases cited by the libelant in its behalf. In those decisions it has been held that the supplies were ordered by one of the persons whom the statute states was presumptively empowered to procure them, or, when such person actually was without authority, that the furnisher was not in possession of sufficient information to put him on inquiry. The statute is not hard to construe, and all of the cases really turn upon questions of fact. The latest decision on the subject can be

found in *Pensacola Shipping Co. v. United States Shipping Board Emergency Fleet Corporation*, 277 Fed., 889, wherein the court found that the furnisher had failed to exercise due diligence.

No case has or can be cited to the effect that if the furnisher had sufficient facts in his possession to put him on notice, he could, nevertheless shut his eyes and, dealing blindly with one who was forbidden to impose liens upon the vessel, enforce an alleged claim of lien.

Libelant's statement that the Pacific Steamship Company attempted to conceal the true ownership of its vessels is pure innuendo. The claimant's record is open to inspection, so that he who runs may read. The whole trouble with the libelant in this case is that it ran too quickly and neglected to read the signs which were there to be seen, had it elected to open its eyes. Libelant's remark has no bearing whatsoever upon the issues herein.

In conclusion, we believe that the libel was properly dismissed upon the grounds set forth in the trial court's decision and we submit that, in any event, it should have been dismissed for the additional reason that the order for the fuel oil was given by a person who was without authority, either presumptive or actual, under the terms of the Act, to procure supplies for the vessel.

We, therefore, ask that the decree of the District Court be affirmed.

Respectfully submitted,

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